

Revised due to adoption of amendments on General File

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2019-20		FY 2020-21	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	\$126,900	\$611,000	\$113,700	\$643,000
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$126,900	\$611,000	\$113,700	\$643,000

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 538, as amended, defines and redefines terms for purposes of the Mechanical Amusement Device Tax Act, provides for an application process for decals under the act, and provides for enforcement.

Manufacturers and distributors of a cash device must apply to the Department of Revenue to receive a determination that the device is in compliance with the act. "Cash device" is defined as a mechanical amusement device capable of awarding awards cash, anything redeemable for cash, gift cards, credit, or other instruments of value. The application must include

- Information regarding the device's location, software, internet connectivity, configuration;
- A fee of \$500;
- A specimen of the device;
- Supporting evidence that under all configurations, settings, and modes of operation that the device is a game of skill and not a game of chance; and
- An affidavit from the distributor that no functional changes in hardware or software will be made without further approval from the Tax Commissioner.

The bill clarifies when a device is not considered a game of skill and lists other factors that can be considered in determining if the device is a game of skill. The department or a court can consider the results of analysis by any independent testing authority evaluating reaction time and other factors in considering whether a gambling device is a game of skill.

Upon a determination that the device is a game of skill, the Tax Commissioner must issue a mechanical amusement device decal for the device as configured. If the application is denied, the operator is provided the opportunity for an administrative hearing before the Tax Commissioner, after which the Tax Commissioner must enter a final decision. Any final decision can be appealed pursuant to the Administrative Procedure Act.

Decals can be issued for any device that is functionally identical to the specimen provided to the department if the application is approved and an annual fee of \$250 per device is paid. As amended, the mechanical amusement device tax in section 77-3005 is unchanged, and the fees in LB 538 are in addition to the tax.

The bill permits the Tax Commissioner, his or her agents, or any peace officer to seize mechanical amusement devices not in compliance with the act and imposes a penalty of \$1,000 per day for operating such device. A device is subject to seizure if the device is a cash device that does not have an unexpired decal as required. The department can request information about any device to promote compliance after the application process, and the recipient of the request must respond within 15 business days.

The criminal offense of possession of a gambling device is amended to provide for an affirmative defense for owners and operators or retail establishments who are not manufacturers, distributors, or sellers of mechanical amusement devices if the device has an unexpired decal as required.

The department can adopt and promulgate rules and regulations under the act.

The operative date is January 1, 2020.

Revenue:

The department estimates the revenue from the fees to the General Fund to be the following:

Fiscal Year	General Fund
2019-20	\$611,000
2020-21	\$643,000
2021-22	\$675,000
2022-23	\$708,000

This estimate seems reasonable based on the data available.

Expenditures:

The Attorney General's Office could see costs associated with additional prosecutions under the bill, but is unable to estimate the amount.

The Department of Revenue estimates the following costs to implement the bill:

- A one-time charge of \$10,000 to reprogram the Charitable Gaming Licensing System;
- Expenditures of \$116,900 in FY 19-20 and \$113,700 in FY 20-21 for 1.0 FTE Revenue Investigator and 1.0 FTE Revenue Operations Analyst II.

These estimates seem reasonable based on the administrative requirements under the bill.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 538	AM: 900, 1278	AGENCY/POLT. SUB: Department of Revenue	
REVIEWED BY: Lee Will	DATE: 4/22/2019	PHONE: (402) 471-4175	
COMMENTS: The Department of Revenue's assessment of fiscal impact seems reasonable given the assumptions used.			

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 538	AM: 1278	AGENCY/POLT. SUB: Attorney General	
REVIEWED BY: Lee Will	DATE: 4/22/2019	PHONE: (402) 471-4175	
COMMENTS: Concur with the Attorney General's assessment of fiscal impact.			

State Agency Estimate

State Agency Name: Department of Revenue				Date Due LFA:			
Approved by: Tony Fulton				Date Prepared:			
				Phone: 471-5896			
	FY 2019-2020		FY 2020-2021		FY 2021-2022		
	<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Revenue</u>	
General Funds	\$126,900	\$611,000	\$113,700	\$643,000	\$112,000	\$675,000	
Cash Funds							
Federal Funds							
Other Funds							
Total Funds	\$126,900	\$611,000	\$113,700	\$643,000	\$112,000	\$675,000	

LB 538, as amended by AM 1278 and AM 900, creates an affirmative defense to possession of a gambling device for the owner/operator of a retail establishment if the device has an unexpired Mechanical Amusement Device (MAD) tax decal. The defense may be overcome if the operator had actual knowledge that the device was an illegal gambling device. The amendments define a “Cash Device” and make it separate and distinct from other mechanical amusement devices. Cash Device is defined as any mechanical amusement device capable of awarding (a) cash, (b) anything redeemable for cash, (c) gift cards, credit, or other instruments which have a value denominated by reference to an amount of currency or (d) anything redeemable for anything described in subdivision (c). It authorizes the Department to seize “without warrant” a device that is not in compliance with the MAD Tax Act.

The amendments create an application process for obtaining approval of a Cash Device, which includes a \$500 application fee. The annual decal fee is \$250 per Cash Device. The applicant must submit information about the device’s location, software, internet connectivity, and configuration as may be required by the Tax Commissioner and provide a specimen of the device and supporting evidence that it is a game of skill and not a game of chance. The applicant must have an affidavit from the distributor affirming that no functional changes in hardware or software will be made to the approved device without further approval from the Tax Commissioner. Decisions must be made on application within 45 days of submission.

The Department can require the manufacturer, distributor, or operator to produce certain information after the device has been put into operation to ensure continued compliance. They must respond to Department requests within 15 days. The Department may seize a device if there is cause to believe it is not in compliance. The amendments authorize the Tax Commissioner to promulgate rules and regulations and removes the deadline of October 15, 2019 for the regulations. The operative date is January 1, 2020.

The Department estimates the following impact on General Fund Revenues due to the annual decal fee and application fee.

Fiscal Year	General Fund
2019-20	\$611,000
2020-21	\$643,000
2021-22	\$675,000
2022-23	\$708,000

The Department estimates \$10,000 will be required to reprogram the Charitable Gaming Licensing System, as well as 1.0 FTE Revenue Investigator and 1.0 FTE Revenue Operations Analyst II to implement the bill.

Major Objects of Expenditure

Class Code	Classification Title	19-20	20-21	21-22	19-20	20-21	21-22
		FTE	FTE	FTE	Expenditures	Expenditures	Expenditures
X62730	Revenue Investigator	1.0	1.0	1.0	\$48,700	\$51,800	\$51,000
S29112	Revenue Operations Clerk II	1.0	1.0	1.0	\$31,700	\$33,700	\$33,200
	Benefits.....				\$26,500	\$28,200	\$27,800
	Operating Costs.....				\$10,000		
	Travel.....						
	Capital Outlay.....				\$10,000	\$0	\$0
	Capital Improvements.....						
	Total.....				\$126,900	\$113,700	\$112,000

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2019

LB⁽¹⁾ 538, AM1278

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Attorney General

Prepared by: ⁽³⁾ Jay Bartel Date Prepared: ⁽⁴⁾ 4-16-19 Phone: ⁽⁵⁾ 402-471-2687

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2019-20		FY 2020-21	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

The fiscal impact to the Attorney General's Office depends on the number of appeals generated. If the number is significant, additional funds would be required, however, we are unable to quantify at this time.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS		2019-20	2020-21
	19-20	20-21	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

ATB